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Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Re: STB Finance Docket No. 35573, Watco Holdings, Inc. and
Watco Transportation Services, L.L.C. – Acquisition of Control
Exemption – Wisconsin & Southern Railroad, L.L.C.

Dear Ms. Brown:

Attached please find the Reply of Watco Holdings, Inc. and Watco
Transportation Services, L.L.C., to the Request for Reconsideration.

If you have any questions, please contact me.

Sincerely,

Karl Morell
Of Counsel

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35573

**WATCO HOLDINGS, INC. AND WATCO TRANSPORTATION SERVICES, L.L.C.
-- ACQUISITION OF CONTROL EXEMPTION --
WISCONSIN & SOUTHERN RAILROAD, L.L.C.**

REPLY TO REQUEST FOR RECONSIDERATION

**KARL MORELL
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**Attorney for:
WATCO HOLDINGS, INC. and WATCO
TRANSPORTATION SERVICES, L.L.C.**

Dated: January 24, 2011

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35573

**WATCO HOLDINGS, INC. AND WATCO TRANSPORTATION SERVICES, L.L.C.
-- ACQUISITION OF CONTROL EXEMPTION --
WISCONSIN & SOUTHERN RAILROAD, L.L.C.**

REPLY TO REQUEST FOR RECONSIDERATION

Watco Holdings, Inc. ("Watco Holdings"), and Watco Transportation Services, L.L.C. ("Watco Services") (collectively "Watco") hereby respond to the request for reconsideration filed by Wisconsin State Senator Tim Cullen ("Senator Cullen") on January 6, 2012, in this proceeding.

BACKGROUND

On November 29, 2011, Watco Holdings and Watco Services filed a Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(2), for Watco Holdings indirectly to control the Wisconsin & Southern Railroad L.L.C. ("WSOR") and for Watco Services to directly control WSOR. The Wisconsin Department of Transportation filed comments on December 22, 2011, stating that it did not want to interfere with the proposed transaction. On December 28, 2011, five Wisconsin State Representatives filed a request to stay the effective date of the exemption to which Watco replied. The exemption became effective on December 29, 2011. By decision served January 6, 2012, Chairman Elliott denied the stay request on grounds that it was untimely.

REPLY

Where, as here, an exemption has become effective, a reconsideration request is treated as a petition to reopen and revoke. Therefore, under 49 C.F.R. § 1115.3(b) the request must state in detail whether reopening is supported by material error, new evidence, or substantially changed circumstances. Senator Cullen has failed to address these standards much less introduce any evidence to warrant a finding favorable to Senator Cullen under these standards.

The standard for revoking an exemption is whether regulation is needed to carry out the rail transportation policy of 49 U.S.C. § 10101. 49 U.S.C. § 10502(d). Requests to revoke must be based on reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted. *Minnesota Comm. Ry., Inc. – Trackage Exempt. – BN RR. Co.*, 8 I.C.C.2d 31, 35-36 (1991); Finance Docket No. 31617, *Chesapeake & Albemarle R. Co. – Lease, Acq. & Oper. Exempt. – Southern Ry. Co.* (not printed), served September 19, 1991; Finance Docket No. 31102, *Wisconsin Central Ltd. – Exempt. Acq. & Oper. – Certain Lines of Soo L.R. Co.* (not printed), served July 28, 1988.

The party seeking revocation of an exemption has the burden of proving that regulation of the transaction is necessary. *Id.* Here, Senator Cullen simply seeks certain information to determine whether revocation of the exemption is even necessary. Because Senator Cullen has submitted no evidence in support of its revocation request, he has failed to meet his burden of proof and his requested relief must be denied.

Officials and representatives of Watco and WSOR have met with various stakeholders, including officials with the Wisconsin Department of Transportation to address any concerns they may have. Watco and WSOR have attempted to schedule a meeting with Senator Cullen to respond to his concerns but so far have been unsuccessful. In anticipation of the meeting, Watco

sent Senator Cullen a written response to his questions which is attached as Exhibit 1. Watco continues to be convinced that Wisconsin officials will be more than satisfied with the plans Watco has for the WSOR.

Granting Senator Cullen's request would require Watco to place WSOR into a voting trust while it files an individual petition for exemption under Section 10502 or an application for control of WSOR. Doing so would potentially jeopardize WSOR service in the interim, unnecessarily delay investments in WSOR's infrastructure and squander resources that would be better spent on improving and expanding WSOR's service.

The proposed transaction does not involve the merger or control of at least two Class I rail carriers. Therefore, absent an exemption, the proposed transaction would be subject to Board review under the standards set forth in 49 U.S.C. § 11324(d).¹ Section 11324(d) provides that the Board "shall approve" the transaction unless it finds both that:

(1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and

(2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

49 U.S.C. § 11324(d).

In transactions subject to Section 11324(d), the primary focus is on the probable competitive effects of the proposed transaction. *See, e.g.,* Finance Docket No. 32579, *Canadian Pac. Ltd., and Soo Line R.R. Co. - Control - Davenport, Rock Island & N. W. Ry.* (served February 10, 1995), slip op. at 5; *Wilmington Terminal R.R., Inc. - Purchase & Lease - CSX Transp., Inc.*, 6 I.C.C. 2d 799, 803 (1990), *pet. for review denied sub nom., Ry. Labor*

¹ In reviewing a petition for exemption, the Board does not undertake a broader analysis than it would apply to a transaction under the statutory provision that would apply in the absence of the exemption. *Vill. Of Palestine v. I.C.C.*, 936 F.2d 1335 (D.C. Cir. 1991).

Executives' Ass'n v. ICC, 930 F.2d 511 (6th Cir. 1991). The public interest factors are considered only where significant anticompetitive effects are found. *Id.*

A finding of competitive harm under Section 11324(d)(1) must be grounded on a showing that any adverse competitive effects are both "likely" and "substantial." *Wisc. Cent. Transp. Corp. – Continuance in Control – Fox Valley & W. Ltd.*, 9 I.C.C.2d 233, 238 (1992). Examples of adverse competitive impacts that would trigger the balancing of the public interest factors under Section 11324(d)(2) "would be the likelihood of significantly higher rates or significantly worsened service, or the likelihood of a combination of the two." *Blackstone Capital Partners – Control Exemption – CNW Corp.*, 5 I.C.C.2d 1015, 1019 (1989)(footnote omitted). Even if such showings were made, the proposed transaction may not be disapproved unless the anticompetitive effects of the proposed transaction outweigh the public interest factors. See Finance Docket No. 31991, *CSX Corp., CSX Transp., Inc. and Carrollton R.R. – Control – Transkentucky Transp. R.R.* (not printed), served April 15, 1991, slip op. at 2.

This transaction involves the control of a Class II railroad by a non-carrier that currently controls twenty four Class III railroads which operate in diverse geographic regions. None of the Class III railroads connect with the WSOR. This transaction, therefore, is neither end-to-end nor parallel. Consequently, the possibility of harm to competition is non-existent. The control of WSOR by Watco will not result in a lessening of competition, the creation of a monopoly, or a restraint of trade in freight surface transportation in any region of the United States.

In addition, the transaction authorized in this proceeding is in the public interest. As with other short-line holding companies, Watco will be able to provide common administrative, maintenance, marketing and other management functions thereby achieving economies of scale and lower costs.

CONCLUSION

Watco respectfully urges the Board to deny Senator Cullen's request for reconsideration.

Respectfully submitted,

A handwritten signature in black ink that reads "Karl Morell". The signature is written in a cursive style with a horizontal line underneath the name.

KARL MORELL
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Attorney for:
WATCO HOLDINGS, INC. and WATCO
TRANSPORTATION SERVICES L.L.C.

Dated: January 24, 2012

EXHIBIT 1

Will Watco increase shipping fees?

The current shipping rates are market-based and that is how they will be set going forward, so there is no change in how rates are set.

Will Watco continue existing service to Wisconsin businesses?

Watco, much like the WSOR, has consistently grown and improved the local business on each of our railroads since operations began 27 years ago. There are no plans to reduce service to any WSOR on-line business and numerous plans to develop new local business. Watco believes the future success of the WSOR will be tied directly to the local on-line businesses and intends to work in conjunction with WSOR staff, Wisconsin DOT, and local development agencies to grow the business on the railroad which will grow the Wisconsin economy.

What is the level of capital investment Watco intends to make in Wisconsin's rail infrastructure?

One of the major reasons Watco was selected as the purchaser is the commitment by Watco to be a long-term railroad operator. This long-term focus to be buyers and developers of railroads requires a capital structure that can meet the needs of our Customers to invest capital to grow the business. Watco is well capitalized and is committed to continue to invest capital and build on the growth that the state and the WSOR team and made in the railroad.

Watco's commitment to Wisconsin

There are three points interested parties should know:

1. Watco's Foundation Principles are to:
 - a. Improve Customer Satisfaction
 - b. Improve profitability
 - c. And do both over the long-term in a safe manner
2. Watco is a buyer of railroads, not a seller of railroads
3. Watco is a Customer First! Company


These three points are the core of how Watco intends to support the WSOR team to build on the great work of the past several years, and insure that the WSOR is the undisputed best railroad in Wisconsin.

The commitment to make capital improvements, grow the business, and to work with other railroads in Wisconsin and across North America are all essential parts of the WSOR plan. Watco has significant experience in the merger and acquisitions of short line railroads and we recognize that questions that relate to previous mergers in the state by other railroad companies. Our commitment is to assure our Customers that Watco is committed to being in Wisconsin for the long-term and working every day to grow the business.

Our commitment is to the Customers, Communities and key partners to grow the WSOR and help lead the economic recovery in Wisconsin.

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of January, 2012, I have caused a copy of the foregoing Reply to be served on all parties of record.

A handwritten signature in black ink, reading "Karl Morell", is written over a horizontal line.

Karl Morell